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FISHERIES AND WILDLIFE LEGISLATION AND
AMENDMENTS

OCTOBER 11 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

Mr. BURDICK, from the Committee on Environment and Public
Works, submitted the following

REPORT

[To accompany H.R. 3338]

The Committee on Environment and Public Works, to which was referred the act (H.R. 3338) to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the act, as amended, do pass.

GENERAL STATEMENT

This legislation transfers a Federal fish hatchery from the U.S. Fish and Wildlife Service to the State of South Carolina to use for fisheries resources management; renames a U.S. Fish and Wildlife Service research laboratory in Massachusetts; directs the U.S. Fish and Wildlife Service to conduct a feasibility study on the establishment of a Federal fish hatchery in West Virginia; reauthorizes the Fish and Wildlife Conservation Act of 1980; authorizes establishment of the Wallkill River National Wildlife Refuge in New Jersey; authorizes establishment of the Bayou Cocodrie National Wildlife Refuge in Louisiana; transfers Federal lands within the National Wildlife Refuge System to the State of South Carolina; and provides the Environmental Protection Agency with resources needed to enforce environmental laws and to ensure that those engaged in enforcement receive consistent and excellent training.

BACKGROUND AND NEED

Cheraw National Fish Hatchery

The Cheraw National Fish Hatchery is located on 206.1 acres approximately four miles southwest of Cheraw, South Carolina. The facility had been used by the U.S. Fish and Wildlife Service primarily to stock farm-ponds. The U.S. Fish and Wildlife Service determined that the hatchery was not contributing to Federal fish production responsibilities and priorities. Consequently, the U.S. Fish and Wildlife Service loaned the buildings and real property to the State of South Carolina for a period of 25 years, and the personal property for a period of 7 years, under a memorandum of agreement signed in 1983. Under this agreement, the State currently produces farm-pond species such as catfish, bass, and bluegills.

Because the State is operating the hatchery for State stocking purposes, and in order to justify large expenditures for the capital investment to enlarge the facility, the State of South Carolina has requested title to all of the hatchery property. The State intends to expend the production capability of the hatchery by building six new ponds, which will require clearing approximately 13 acres of forest. This expansion has been approved by the U.S. Fish and Wildlife Service.

Under the current memorandum of agreement and existing law, any revenue from the sale of the timber will be deposited in the Refuge Revenue Sharing Fund. Amounts in this fund are distributed to local governments according to the formula prescribed by the Refuge Revenue Sharing Act. Upon enactment of this legislation and transfer of the hatchery, all receipts from future timber harvests would go to the State of South Carolina and would be required to be used as a part of that State's fisheries resource management program.

In recent years, the Committee on Environment and Public Works has approved other legislation to transfer Federal hatcheries to States under similar circumstances, including hatcheries in Berlin, New Hampshire; Miles City, Montana; Frankfort, Kentucky; Lake Mills, Wisconsin; and Cohutta, Georgia. In each case, the hatcheries were being operated to benefit State fishery programs and would continue to contribute to the Nation's fishery resources. In addition, each of the legislative authorizations provided for the reversion of title to the United States if the facilities are ever used for other purposes. These conditions are also met in this instance.

Fish and Wildlife Conservation Act of 1980

Historically, funding of State fish and wildlife programs was provided by hunters and anglers, primarily through their purchase of licenses. In addition, the key cooperative State/Federal fish and wildlife programs established by the Pittman-Robertson and Dingell-Johnson Acts were funded by Federal excise taxes on arms, ammunition and fishing equipment. Management by the States tended to focus on those species that traditionally were subject to fishing and hunting.

In 1980, with the passage of the Fish and Wildlife Conservation Act, the Congress sought to encourage the conservation of fish and wildlife species that are not ordinarily subject to hunting and fishing (over 89 percent of all vertebrate species in the United States). The Act authorized annual appropriations of \$5 million for development by the States of comprehensive management plans to benefit these so-called "non-game" species. The Act also required the U.S. Fish and Wildlife Service to "conduct a comprehensive study to determine the most equitable and effective mechanism for funding [the implementation of] State conservation plans." The Fish and Wildlife Service completed this study in 1984 but did not recommend any initiative for funding the Act. No money for development of the State comprehensive plans has ever been requested by an Administration or appropriated by a Congress. The authorization to appropriate funds for development of State plans expired at the end of fiscal year 1990.

Wallkill River National Wildlife Refuge

The Wallkill River bottomlands consist of approximately 7,500 acres of floodplain along a six-mile stretch of the Wallkill River in Sussex County, New Jersey. These bottomlands are one of the few large wetland and waterfowl concentration areas remaining in northwestern New Jersey, and they support a diversity of wildlife species, including species on the State threatened and endangered list. Bald eagles are found within the area, and the U.S. Fish and Wildlife Service has determined that the Wallkill River has excellent potential to support breeding and migrating ospreys as populations of this species expand northward. The Wallkill River's bottomlands also provide excellent breeding habitat for woodcock, and reportedly harbor black bears and bobcats as well.

Intense development pressure threatens to degrade significantly the natural resource values of the Wallkill River bottomlands. Residential building permits in the three townships surrounding the area have increased five-fold in the past five years, and four major subdivisions currently are proposed within the proposed boundary of the Wallkill River National Wildlife Refuge. Commercial and industrial development also is proceeding at a rapid rate. A significant amount of the land proposed for the refuge is currently on the real estate market, and 27 owners, holding 2,500 acres, have come forward as willing sellers for the refuge.

In July 1989, the U.S. Fish and Wildlife Service issued a draft Environmental Assessment concerning establishment of a National Wildlife Refuge along the Wallkill River in New Jersey. A final assessment, with a preferred alternative of establishing a refuge, was published in December 1989.

Bayou Cocodrie National Wildlife Refuge

Historically, the Bayou Cocodrie area was forested bottomland hardwoods. Over half the land has been cleared for agriculture and much of that land now lies fallow. The area is characterized by swales that hold water seasonally or, in cases such as Wallace Lake, permanently. The ridges between the swales support a diversity of vegetation typical of productive river bottom areas.

According to the U.S. Fish and Wildlife Service, the Bayou Cocodrie area provides excellent habitat for species such as deer, turkey, and squirrel. The swales and depressional sloughs provide high-quality habitat for waterfowl when winter water is available. Implementation of a winter waterfowl management plan once the refuge is established is expected to provide habitat for hundreds of thousands migratory waterfowl, similar to what is found in the adjacent Catahoula Lake and Three River basin areas.

Restoration of formerly cropped bottomland hardwoods and introduction of winter water supplies into such areas and into remaining forested bottomlands are primary elements of the Lower Mississippi Valley Joint Venture under the North American Waterfowl Management Plan. Acquisition of Bayou Cocodrie would be a significant step toward meeting the goals of this Plan.

The U.S. Fish and Wildlife Service also reports that the waters of the Bayou Cocodrie area support excellent populations of fish species such as crappie, bass, bream, and catfish. Endangered species such as wintering bald eagles and peregrine falcons are found in the area. There are occasional reports of sightings of osprey, wood storks, and swallow-tailed kites. Finally, the area supports an abundance of resident and migratory songbirds.

Carolina Sandhills Wildlife Management Area

In 1939, the Carolina Sandhills National Wildlife Refuge was established by Executive Order from property acquired by the Federal Government under the Land Utilization Project. Under this project, the Federal Government acquired worn out lands and provided owners with more productive lands elsewhere. Under an agreement signed that same year, the South Carolina Forestry Commission agreed to protect, develop, and manage a portion of the property, known as the Carolina Sandhills Wildlife Management Area, as a demonstration/conservation area.

The primary concern in the 1940's was development and rehabilitation of the land, creation of short- and long-term employment opportunities, and establishment of a resource base for a permanent rural economy. Other land management objectives included development of wildlife populations sufficient to allow public hunting, recreational opportunities, and research and demonstration projects for forest conservation and timber activities. During the past 50 years, the majority of the rehabilitation work has been completed and the forest now is entirely self-sufficient (i.e., revenues from timber operations cover the costs of managing the forest). Additional goals, such as the protection of endangered species, have become part of the mission for these lands over the years.

Under the existing management agreement, the State manages the property and prepares annual plans and reports detailing needs, objectives and accomplishments. The Department of the Interior, through the U.S. Fish and Wildlife Service, analyzes and approves the State's plans.

Both the Fish and Wildlife Service and the State of South Carolina believe that the Cooperative Agreement is out-of-date, inefficient and cumbersome. As early as 1956, discussions were held between the Fish and Wildlife Service and the State concerning

transfer of title of the portion of the property managed by the State. In 1988, Secretary of Interior Hodel indicated his support for a proposal to transfer title of the so-called Sand Hills State Forest to the South Carolina Forestry Commission if proper protection of Fish and Wildlife Service responsibilities could be assured and some compensation formula could be agreed upon.

The South Carolina Forestry Commission has recently completed an environmental assessment of the proposed land transfer. Preparation of an environmental assessment was recommended in order to facilitate passage of this legislation.

EPA enforcement

The backbone of EPA's criminal enforcement program is its investigators, who provide EPA with the ability to collect evidence about environmental violations. The current number of criminal investigators is clearly inadequate for several reasons. First, the nature of the criminal enforcement of environmental laws has changed in the last several years. Congress, in reauthorizing environmental legislation, has increased emphasis on criminal enforcement, including the upgrading of many offenses from misdemeanors to felonies.

Second, according to EPA, considerably more demands are being placed on its criminal enforcement program. As public awareness of environmental violations grows, EPA is receiving a steady stream of tips and leads concerning environmental violations from the public, from within EPA programs, and from State officials. In addition, EPA is working to better focus its criminal enforcement efforts on repeat civil offenders, as well as on specific industries that have not corrected their most harmful environmental practices. Cases such as these require substantial resources.

Third, there is a need to help States and localities with their enforcement program. While some States have fully developed programs (for example, New Jersey has 37 investigators), most programs would benefit from assistance from the Federal Government. The National District Attorneys' Association has emphasized the need for Federal-local teams to investigate environmental crimes, such as the task forces used by the Drug Enforcement Administration, which result in the conviction of significantly more drug offenders than would be possible by Federal agents alone. One such environmental enforcement task force has been implemented in Seattle, Washington, for the purpose of investigating, on a regional basis, significant pollution crimes.

Fourth, an increase in the number of criminal investigators can result in a greater degree of fairness to the regulated community. In many enforcement situations, EPA has discretion to handle a case through the criminal, civil or administrative route. Without any clear understanding about how EPA will handle a particular violation, the regulated community has little guidance for establishing internal controls and self-policing activities. Increased enforcement resources will enable EPA to develop a more consistent and equitable approach to handling enforcement cases.

Criminal enforcement involves special training in laboratory procedures and evidence collection. Many State and local laboratory personnel do not have the training necessary to support criminal

investigations and, therefore, EPA facilities may assist in State and local cases. It is essential that EPA provide a leadership role in developing the best environmental forensic laboratories and provide necessary technical assistance to States and localities.

In fiscal year 1990, EPA has approximately 21 civil investigators devoted exclusively to enforcement of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). EPA has found that civil investigators have been extremely useful in examining records and tracking down information and witnesses relative to determining responsibility for these activities. Civil investigators provide critical support for court cases.

The EPA Inspector General has recently issued reports finding that consent agreements are not being enforced and that, because of inadequate follow-up enforcement efforts by EPA, violators were able to delay or avoid compliance and to do so without penalties. While there may be several reasons for this lack of follow-up, it is clear that there is simply not enough manpower devoted to the enforcement effort.

At a hearing before the Subcommittee on Toxic Substances, Environmental Oversight, Research and Development, law enforcement officials all emphasized that environmental enforcement is currently hampered by a lack of training. This training is particularly complicated because there is often a need to be familiar with a wide range of environmental laws, disciplines (e.g. chemistry, toxicology, biology, geology, and hydrology), sophisticated equipment (e.g. air monitoring devices), complex sample methodology, and use of protective clothing. While there are currently three EPA training programs, EPA, State and local officials all agree that the resources of these programs cover only limited areas, do not provide comprehensive training, and train only a fraction of those involved in enforcement.

SECTION-BY-SECTION ANALYSIS

Title I—Fisheries and wildlife provisions

Section 101. Conveyance of Fish Hatchery

Section 101 of H.R. 3338 would require the Secretary of the Interior to convey the Cheraw National Fish Hatchery to the State of South Carolina without reimbursement.

Section 102. Reversionary interest in the United States

Section 102 would require the South Carolina Wildlife and Marine Resources Department to use the facility, and any receipts from the sale of timber or other products from the fish hatchery lands, for the South Carolina fisheries resources management program. If used for any other purpose, the facility would revert to ownership by the United States.

Section 103. Anadromous Fish Research Laboratory

Section 103 would provide that the Northeast Fish Research Laboratory located at Turners Falls, Massachusetts be known and designated as the "Silvio O. Conte Anadromous Fish Research Center". The Center was dedicated on June 9, 1990.

Section 104. Establishment of fishery resources

Section 104 would authorize and direct the Secretary of the Interior to conduct a feasibility study on establishing a Federal fish hatchery in McDowell County, West Virginia. Upon completion of the feasibility study and location of a suitable site and water supply, the Secretary would be authorized to construct the hatchery.

Section 105. Redesignation of National Fish and Wildlife Forensics Laboratory

Section 105 would rename the U.S. Fish and Wildlife Service's National Fish and Wildlife Forensics Laboratory located in Ashland, Oregon, as the "Clark R. Bavin National Fish and Wildlife Forensics Laboratory." Mr. Bavin served as the chief of the Service's law enforcement division for 18 years.

Section 106. Reauthorization of Fish and Wildlife Conservation Act of 1980

Section 106 would extend the authorization of appropriations to carry out the Fish and Wildlife Conservation Act of 1980 through fiscal year 1992. The Act authorizes \$5 million annually to assist States in the development of comprehensive management plans to benefit fish and wildlife species that are not ordinarily subject to hunting (so-called non-game species).

Section 107. Establishment of Wallkill River National Wildlife Refuge

Section 107 is an amended version of S. 1985, the "Wallkill River National Wildlife Refuge Act." This section would authorize the Secretary of the Interior to acquire approximately 7,500 acres of land and water as depicted upon a map entitled "Wallkill River National Wildlife Refuge" and dated March, 1990. The U.S. Fish and Wildlife Service has completed evaluation of the selection area and issued a Final Environmental Assessment with a preferred alternative of acquiring 7,500 acres. This alternative is depicted on the map referenced by the legislation.

Section 107(g) of the bill would authorize the appropriation of such sums as are necessary for the acquisition of lands and waters and the development, operation and maintenance of the new refuge.

Section 108. Establishment of Bayou Cocodrie National Wildlife Refuge

Section 108 is an amended version of S. 2447, a bill to establish the Bayou Cocodrie National Wildlife Refuge. It would require the Secretary of the Interior to acquire approximately 18,000 acres of land and water in Louisiana for a new Bayou Cocodrie National Wildlife Refuge.

Section 108(f)(3) would require the U.S. Fish and Wildlife Service to manage an amount of refuge woodlands as a contiguous mature forest sufficient to benefit the species of passerine birds that occupy this type of habitat. The Fish and Wildlife Service would be required further to give special consideration to accomplishing this

objective through use of its current authority, including its authority to establish Research Natural Areas within the refuge.

Section 108(f)(4) would ensure that any permit for access to and development of natural gas or other reserved non-Federal mineral interests within the refuge contains economically reasonable terms and conditions to protect fish and wildlife and to minimize, to the maximum extent practicable, any adverse effects on these resources or their habitat. The amendment is intended to prevent problems similar to those that occurred several years ago in the D'Arbonne National Wildlife Refuge in Louisiana, in which the courts upheld oil and gas development that was conducted without regard to the conditions the U.S. Fish and Wildlife Service sought to impose.

Section 109. Transfer of lands

Section 109 is the text of S. 164, a bill to transfer certain lands to the South Carolina Commission of Forestry, an agency of the State of South Carolina. It would direct the Secretary of the Interior to transfer fee simple title to approximately 45,550 acres of land included within the National Wildlife Refuge System and designated the Carolina Sandhills Wildlife Management Area to the State of South Carolina to be administered by the South Carolina Commission of Forestry as the Sand Hills State Forest. The land would revert back to the U.S. Fish and Wildlife Service if the South Carolina Commission of Forestry does not comply with the terms of the transfer, ceases to use the land for public purposes, or no longer desires to own or manage the land.

Under this section, the South Carolina Forestry Commission would be required to manage the transferred lands, in consultation with the Fish and Wildlife Service, for the benefit of endangered and threatened species of plants and animals and for other public purposes. The State would also be required to enter into an agreement to provide the Carolina Sandhills National Wildlife Refuge the following services at no cost: basic fire protection for 50 years, prescribed burning, and reforestation.

Subsection f(1) of section 109 would further condition the land transfer upon the South Carolina Commission of Forestry managing the lands in accordance with the objectives of the Recovery Plan for the red cockaded woodpecker, and any amendments to that Plan. The plan referenced by this provision is the "U.S. Fish and Wildlife Service's Recovery Plan for the Red Cockaded Woodpecker", developed pursuant to section 5 of the Endangered Species Act.

Title II—Environmental enforcement

Title II of H.R. 3338 is the text of S. 2176, which was reported by the Committee on July 13, 1990 and passed by the Senate, with one technical addition.

Section 201. Short title

Section 201 provides that title II may be cited as the "Pollution Prosecution Act of 1990".

Section 202. EPA Office of Criminal Investigation

Section 202 would provide for an increase in EPA criminal investigators (also known as Special Agents) devoted to criminal enforcement over a five-year period, so that the total number of criminal investigators would increase from its base of about 54 in fiscal year 1990 to at least 72 in fiscal year 1991; to 110 in fiscal year 1992; to 123 in fiscal year 1993; to 160 in fiscal year 1994; and to 200 criminal investigators in fiscal year 1995. Section 202 also would allow, over the next five years, for the increase in staff necessary to support additional criminal investigators. The purpose of this section is to ensure that EPA has adequate resources and the number of investigators needed to enforce the criminal provisions of our environmental laws.

Section 202 is intended further to assure that the EPA has all the tools necessary for successful criminal prosecutions under the environmental laws, especially additional or special laboratory facilities. As the case load increases, more laboratory facilities may be needed.

In accordance with EPA's current organizational reporting structure, the head of the Office of Criminal Investigation, which is a civil service position, shall report to the Assistant Administrator for Enforcement.

Section 203. Civil investigators

Section 203 would provide for an increase of 50 civil investigators by fiscal year 1991 to assist the EPA Office of Enforcement in the investigation and enforcement of civil authorities of environmental laws. This section also is intended to expand the use of civil investigators to other environmental media and to provide for investigator training in multi-media skills. Further, this section is intended to assure that the reliance on outside consultants is decreased. Finally, this section would not restrict the Administrator's discretion with respect to decisions about the organizational structure of the current or expanded civil investigator program.

Section 204. National Training Institute

Section 204 would provide for the creation of a National Enforcement Training Institute within the EPA Office of Enforcement. This Institute would be an umbrella educational institute at which EPA would conduct comprehensive criminal and civil environmental enforcement training for Federal, State, and local personnel. The Institute would provide a comprehensive and integrated approach to training, in which enforcement personnel are trained in a range of specialties. In this way, inspectors, case development technical personnel, engineers, investigators, laboratory experts and attorneys would be better able to work together as members of a case development team.

EPA should coordinate the Institute's training programs with current programs and consolidate resources, where such consolidation would provide for more effective training. The EPA also should consult with and involve both State and local officials in the decisions about the structure and programs of the Institute, including the National Association of Attorneys General, the National

District Attorneys Association, the four regional environmental projects, and other state and local enforcement organizations from all areas of the country.

Section 205. Fund

Section 205 would provide for the establishment, within the Department of the Treasury of the United States, of a Pollution Prosecution Fund to support implementation of the expanded enforcement program.

The Pollution Prosecution Fund would be comprised of 50 percent of the penalties deposited in the Treasury in the previous fiscal year, commencing with fiscal year 1990, from civil and criminal penalties imposed in connection with the violations of laws administered by the Environmental Protection Agency (other than moneys specifically earmarked by law for other purposes), up to limits specified in this section. For fiscal year 1991, the money deposited in the fund would be 50 percent of the penalties specified above, or \$13 million, whichever is less. The amount of monies to be transferred to the fund would increase to \$18 million in fiscal year 1992, \$20 million in 1993, \$26 million in 1994, and \$33 million in 1995.

The laws administered by the EPA referred to in this title include the Clean Water Act, the Clean Air Act, the Solid Waste Disposal Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act and the Safe Drinking Water Act. Another bill reported by the Committee on Environment and Public Works, S. 1076, would require that 50 percent of penalties, up to limits specified, be deposited in an Environmental Trust Education Fund. If both bills are enacted, 50 percent of the total penalties would be available for each fund, up to the limits specified in each bill (e.g. if \$40 million were collected in penalties in 1990, \$13 million would be available in 1991 for the Pollution Prosecution fund and \$15 million for the Education Fund in 1991).

Section 206. Authorization

Section 206 would authorize the appropriations necessary to carry out the requirements of this title. In the event that the monies deposited in the Pollution Prosecution Fund are less than amounts specified in Section 205, appropriations would be authorized from the general revenues to account for the difference.

HEARINGS

H.R. 3338 was passed by the House on July 16, 1990. No hearing was held on the bill as passed by the House. The Committee held a hearing on S. 2176, title II of H.R. 3338, on April 24, 1990. No hearings were held on the other amendments to the House-passed measure.

ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this

bill be announced in this report. The bill was ordered reported on September 25, 1990, by unanimous voice vote.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each report to contain a statement of the cost of the reported bill prepared by the Congressional Budget Office. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 1990.

HON. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate of H.R. 3338, an act to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 3338.
2. Bill title: An act to direct the Secretary of the Interior to convey all interest of the United States in a fish hatchery to the State of South Carolina, and for other purposes.
3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, September 25, 1990.
4. Bill purpose: Title I of H.R. 3338 would provide for the acquisition and disposal of certain lands and facilities by the U.S. Fish and Wildlife Service (USFWS).

Section 103 of the act would direct the USFWS to conduct a feasibility study for a proposed national fish hatchery in West Virginia. The section would authorize the agency to construct the facility if study results are favorable and if a suitable site and water supply can be found. Appropriations of \$2.5 million would be authorized to carry out this section. Sections 107 and 108 would designate two new areas for inclusion within the National Wildlife Refuge System. The two sections would authorize the acquisition of about 7,500 acres in New Jersey and about 18,000 acres in Louisiana. The USFWS would be directed to establish and operate the areas as the Wallkill River and Bayou Cocodrie national wildlife refuges once sufficient property has been acquired. For these purposes, sections 107 and 18 would authorize the appropriation of whatever sums are necessary.

Title I also would direct the Secretary of the Interior to convey to South Carolina all federal interests in the Cheraw State Fish Hatchery and the Carolina Sandhills Wildlife Management Area.

Finally Title I would reauthorize funding for state grants under the Fish and Wildlife Conservation Act of 1980 (P.L. 96-366). These grants would be used to offset a portion of the costs incurred by state agencies to develop, revise or implement conservation plans for game and nongame fish and wildlife. For this purpose, Section 106 of the act would authorize appropriations of \$5 million for each of fiscal years 1991 and 1992.

Other provisions of Title I would have no impact on federal spending. Title II, the Pollution Prosecution Act of 1990, would expand the enforcement capabilities of the Environmental Protection Agency (EPA). Sections 202 and 203 would require the EPA to increase the number of civil and criminal investigators on its staff. Section 204 would establish a National Enforcement Training Institute. For the purposes of financing these provisions, Section 205 would establish a pollution prosecution fund within the U.S. Treasury. For fiscal years 1991 through 1995, this section would require that a certain portion of civil and criminal penalties collected for violations of environmental statutes be transferred to the new fund from the general fund of the Treasury. For each year, the amount of penalty collections so transferred would be the lower of: (1) the amount authorized for appropriations from the fund for that year or, (2) 50 percent of the penalties collected in the previous year. As specified in Section 206, authorized appropriations from the fund would be \$13 million for 1991, \$18 million for 1992, \$20 million for 1993, \$26 million for 1994, and \$33 million for 1995. In the event that penalty collections transferred to the new fund are less than these amounts. Section 206 would authorize the appropriation of the difference from general revenues.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Title I:					
Estimated authorization level	41	6	1	1	1
Estimated outlays	20	17	11	1	1
Title II:					
Authorization level	13	18	20	26	33
Estimated outlays	11	17	20	25	32
Total:					
Estimated authorization level	54	24	21	27	34
Estimated outlays	31	34	31	26	33

The costs of this act fall within budget function 300.

Basis of Estimate: For the purposes of this estimate, it is assumed that H.R. 3338 will be enacted early in fiscal year 1991 and that the full amounts estimated to be necessary will be appropriated for each fiscal year.

Title I: The Title I authorization level includes \$2.5 million in fiscal year 1991 for one-time activities authorized by Section 103. CBO estimates that the USFWS would spend about \$300,000 over one and one-half years to complete the required feasibility study for the West Virginia hatchery. Assuming that a facility is found to be feasible, the remaining \$2.2 million authorized would be

spent for hatchery construction over the following two years. Outlays for these activities would total about \$1 million over the first two fiscal years. An additional \$1 million and \$0.5 million would be spent in 1993 and 1994, respectively.

For fiscal year 1991, the Title I authorization level also includes estimated one-time costs of \$34 million for the acquisition of the Wallkill River (\$25 million) and Bayou Cocodrie (\$9 million) properties. Of this amount, about \$16 million would be spent during fiscal year 1991, \$10 million in 1992, and the remaining \$8 million in the following year.

Beginning in fiscal year 1992, additional authorization levels and outlays of \$0.9 million a year have been included for the management and operation of the West Virginia hatchery and the two wildlife refuges, including estimated payments required by the Refuge Revenue Sharing Act (16 U.S.C. 715s).

Estimates for the West Virginia hatchery and the two refuge additions are based on the assumption that all lands and facilities authorized by the bill would be acquired by the USFWS. The authorization level for the planning and construction of the West Virginia hatchery is that specified in the act. For all other costs related to these three projects (including annual expenses), the authorization level has been estimated on the basis of information provided by the USFWS and the West Virginia Department of Natural Resources. Associated outlays have been estimated on the basis of such information as well as on historical spending patterns for similar programs.

In addition to these amounts, the Title I authorization level for each of fiscal years 1991 and 1992 includes \$5 million for wildlife assistance grants, as specified by Section 106. Based on spending patterns for similar programs, outlays for the grants are estimated to be \$4 million in 1991, \$5 million in 1992 and \$1 million in 1993.

CBO estimates that the conveyance of the South Carolina properties under Sections 101 and 109 would have no impact on the federal budget because both properties are already managed or operated by the state.

Title II: The authorization levels for Title II are those specified by Section 206. Under this section, these amounts would be appropriated from the newly created pollution prosecution fund or from the general fund of the treasury (if deposits to the new fund are insufficient).

In 1988 and 1989, EPA collected an average of \$30.5 million in civil and criminal penalties. If this level of collections is maintained, an appropriation of general revenues would be required to reach the authorized amount each year beginning in 1992. However, the additional investigators required by this title would likely increase the number of cases prosecuted. Depending on the type of cases and the sentence or settlement in each case, the additional workload could result in higher penalty collections, thereby reducing or eliminating the need for general fund appropriations.

Outlays for Title II have been estimated on the basis of historical spending patterns for EPA enforcement activities.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO has prepared cost estimates for several bills with provisions similar or identical to those of this legislation—including H.R. 3338, as ordered reported by the House Committee on Merchant Marine and Fisheries on May 23, 1990, and S. 2176, the Pollution Prosecution Act of 1990, as ordered reported by the Senate Committee on Environment and Public Works on June 12, 1990. For such provisions, the earlier estimates are identical to this one.

9. Estimate prepared by: Deborah Reis and Laura Carter.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

DEPARTMENTAL REPORTS

The following departmental reports were received on provisions of H.R. 3338:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, July 20, 1990.

Hon. QUENTIN N. BURDICK,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2344, a bill "To require the conveyance of the Cheraw Fish Hatchery to the State of South Carolina."

We support the enactment of S. 2344.

S. 2344 would require the Secretary of the Interior to convey the Cheraw National Fish Hatchery to the State of South Carolina without reimbursement. The State Wildlife and Marine Resources Department would be required to use the facility for fisheries resources management purposes. If used for any other purpose, the facility would revert to ownership by the United States.

The hatchery is located on 206.1 acres approximately four miles southwest of Cheraw, South Carolina. Based upon a review of Federal fish production responsibilities and priorities, the Service loaned the buildings and real property to the State for a period of 25 years, and the personal property for a period of 7 years, under a memorandum of agreement signed in 1983. The facility has been used primarily in the Service's "farm-pond" stocking program, and the State currently produces farm-pond species such as catfish, largemouth bass, bream, bluegill, and red ear sunfish.

Since they are operating it for State stocking purposes, and in order to justify large expenditures for the capital investment to enlarge the facility, the State desires title to all of the hatchery property. The State intends to expand the production capability of the hatchery by building six new ponds. This requires clearing approximately 13 acres of standing timber. The Service has approved this work.

Under the current arrangement and existing law, any proceeds realized from the sale of the timber will be deposited in the Refuge Revenue Sharing fund, which in turn is distributed to local governments according to a statutorily prescribed formula. After the transfer, all receipts from future harvests would go to the State

and, under the provisions of the bill, would be required to be used as a part of the State fisheries resource management program.

In recent years a number of other hatcheries have been transferred to states under similar circumstances, including: Berlin, New Hampshire; Miles City, Montana; Frankfort, Kentucky; Lake Mills, Wisconsin; and Cohutta, Georgia. We supported these transfers because the hatcheries were being operated to benefit State fishery programs and would continue to contribute to the Nation's fishery resources. In addition, each of the legislative authorizations provided for the reversion of title to the United States if the facilities are ever used for other purposes. These conditions are also met in this instance.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

KNUTE KNUDSON, Jr.,
Deputy Assistant Secretary,
Fish and Wildlife and Parks.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 6, 1990.

HON. QUENTIN N. BURDICK,
Chairman, Committee on Environment, and Public Works, U.S.
Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2447, a bill "To establish the Bayou Cocodrie National Wildlife Refuge."

We support the enactment of S. 2447 if it is amended as suggested herein.

S. 2447 would require the Secretary of the Interior to acquire approximately 18,000 acres of land and water in the State of Louisiana for a new Bayou Cocodrie National Wildlife Refuge.

We believe that the lands proposed for inclusion in the refuge are important wetlands and valuable wildlife habitat and thus support the establishment of a new refuge in the area. Historically the Bayou Cocodrie area was forested bottomland hardwoods. Over half the land has been cleared for agriculture and much of that is now lying fallow. Old river scars from swales which hold water seasonally, or in cases such as Wallace Lake, permanently. The ridges between the swales support a diversity of vegetation typical of productive river bottom areas.

The area provides excellent habitat for species such as deer, turkey, and squirrel. The swales and depressional sloughs provide high-quality waterfowl habitat when winter water is available. Implementation of a winter waterfowl management plan will provide the habitat for hundreds of thousands migratory waterfowl, similar to what is found in the adjacent Catahoula Lake and Three River basin areas.

Restoration of formerly cropped bottomland hardwoods and introduction of winter water supplies into such areas and into re-

maining forested bottomlands are primary elements of the Lower Mississippi Valley joint Venture under the North American Waterfowl Management Plan. Acquisition of Bayou Cocodrie would be a significant step toward meeting Plan goals in this Joint Venture area.

The waters of the Bayou Cocodrie area support excellent populations of fish species such as crappie, bass, bream, and catfish. Endangered species such as wintering bald eagles and peregrine falcons are found in the area. There are occasional reports of sightings of osprey, wood storks, and swallow-tailed kites. Finally, the area supports an abundance of resident and migratory songbirds.

However, we do have some concerns with section 5(c) of S. 2447 which prohibits the commercial harvest of timber within the refuge and prohibits the cutting of timber other than to provide or improve public access or for the prevention or control of insect infestation and disease. We believe this language places unacceptable restrictions on the management of the refuge and establishes an undesirable precedent in support of those restrictions. We therefore recommend that section 5(c) be amended as follows: * * *

"(c) In managing the refuge, the Secretary shall manage an amount of refuge woodlands as a contiguous mature forest sufficient to benefit the species of passerine birds that occupy this type of habitat. The Secretary shall give special consideration to accomplishing this objective through use of his current authority, including his authority to establish Research Natural Areas within the refuge."

The Office of Management and Budget has advised that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

KNUTE KNUDSEN, Jr.,
Deputy Assistant Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 6, 1990.

HON. QUENTIN N. BURDICK,
Chairman, Committee on Environment, and Public Works, U.S.
Senate, Washington, DC.

DEAR MR. CHAIRMAN: This response to your request for our views on S. 1985, a bill entitled the "Wallkill River National Wildlife Refuge Act."

We support the enactment of S. 1985 if it is amended as suggested herein.

S. 1985 would require the Secretary to designate, within one year of its enactment, approximately 7,500 acres of land and water within a selection area defined as "the lands, wetlands and waters of the Wallkill River in the State of New Jersey" for inclusion within a new Wallkill River National Wildlife Refuge. The Secretary would subsequently be required to publish a map of the area designated for the refuge, and be authorized to acquire the lands and waters within the designated area.

The new refuge would be managed under the provisions of the National Wildlife Refuge System Administration Act. The bill would authorize the appropriation of such sums as are necessary for the acquisition and management of the new refuge.

The U.S. Fish and Wildlife Service has evaluated the area proposed for creation of the Walkill River National Wildlife Refuge. A draft Environmental Assessment was issued for public comment in July 1989 and a final assessment, with a Finding of No Significant Impact for the preferred alternative of establishing a refuge, was signed in December 1989.

The Wallkill River bottomlands proposed for inclusion in the new refuge by S. 1985 are one of the few large wetland and waterfowl concentration areas remaining in northwestern New Jersey. They support a diversity of wildlife species unparalleled in that part of the State. The area consists of approximately 7,500 acres of floodplain along a six-mile stretch of the Wallkill River in Sussex County.

Large numbers of waterfowl—including black ducks, mallards, green and blue-winged teal, wood ducks, Canada geese, American mergansers, hooded mergansers, ruddy ducks, ring-necked ducks and buffleheads—use the river valley as a migratory stop-over area. These wetlands also provide excellent nesting habitat for black ducks, mallards, green and blue-winged teal, wood ducks, Canada geese, and American and hooded mergansers. As a result, the area is identified as a day priority habitat area by the North American Waterfowl Management Plan.

The presence of species on the State threatened and endangered list within the proposed new refuge has been confirmed; these included a great blue heron rookery located there until a year ago when the nesting trees were cut down. Bald eagles are found within the area, and it has excellent potential to support breeding and migratory ospreys as their populations expand northward. These lands are excellent breeding habitat for woodcock, and reportedly harbor black bears and bobcats as well.

Because of its proximity to New York city, intense development pressure threatens to degrade significantly the area's natural resource values. Residential building permits in the three townships surrounding the proposed new refuge have increased five-fold in the past five years, and four major subdivisions are currently proposed within the proposed acquisition boundary. Commercial and industrial development is also proceeding at a rapid rate. A significant amount of the land proposed for the refuge is currently on the real estate market, and 27 owners, holding 2,500 acres, have come forward as willing sellers for the refuge.

Because the Service has already completed evaluation of the selection area and issued a Final Environmental Assessment with a preferred alternative of acquiring 7,500 acres, as also provided in this legislation, we see no reason for the Secretary to go through the selection process described in S. 1985.

We recommend instead that the Committee designate the Service's preferred alternative, as depicted on the enclosed map, as the refuge.

We also request the Committee to give consideration to applying our recommendation for S. 2582, relating to future expansion of the refuge, to S. 1985 as well.

The Office of Management and Budget has advised that it has no objection to the presentation of this report from the standpoint of the Administration.

Sincerely,

KNUTE KNUDSEN, Jr.,
Deputy Assistant Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, September 25, 1990.

Hon. JOHN CHAFEE,
Ranking Minority Member, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR SENATOR CHAFEE: This is in response to the inquiry of your staff concerning the Department's position on S. 164, directing the transfer of 44,550 acres of land under the jurisdiction of the Fish and Wildlife Service (Service) to the South Carolina Forestry Commission.

The Department's position remains as stated in former Secretary Hodel's letter of February 10, 1988, addressed to Senator Thurmond, to which your staff referred. We do not oppose transfer of these lands if Service wildlife responsibilities are protected and some compensation is provided in the form of fire and forest management on the adjacent Carolina Sandhills National Wildlife Refuge. The provisions of S. 164 meet these conditions, and provide for adequate Service oversight of the Forestry Commission's management of endangered and threatened species.

We do suggest an amendment to clarify the endangered and threatened species protection provisions of the bill, as follows:

On page 4, line 14, after the words "transferred lands", insert: "under the provisions of section 7(a)(2) of the Endangered Species Act, as if the South Carolina Commission of Forestry were a Federal agency".

In addition, we suggest that the Committee Report specify that the Recovery Plan referenced in section 2(1) of the bill is the United States Fish and Wildlife Service's Recovery Plan for the Red Cockaded Woodpecker, developed pursuant to section 4 of the Endangered Species Act.

The South Carolina Forestry Commission has managed these lands under a license agreement since 1939, prior to their coming under the Service's jurisdiction. We feel that the public interest will continue to be served, in a more effective manner, with the passage and implementation of S. 164.

The Office of Management and Budget has advised that it has no objection to the presentation of this report from the standpoint of the Administration.

Sincerely,

KNUTE KNUDSON, Jr.,
Deputy Assistant Secretary.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection (4) of the rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate.

